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CANADIAN BAR ASSOCIATION

(ONTARIO BRANCH)

COMMERCIAL LAW SUB-SECTION

Recommendations to the Ontario Committee on Taxation:

Apart from the many administrative aspects of tax law that are being considered by the Committee, we think that some thought should also be given to the practical difficulties encountered by solicitors in establishing whether a clear title can be certified in respect of property which could be subject to an unregistered tax lien in favour of the Crown. Probably the worst type is the "floating charge" lien that can bind all of a person's assets to the detriment of those dealing with him in good faith and without notice. Examples of unregistered liens are those created by the following Ontario Statutes:

Assessment Act, S. 34 (4) - Lien on interest of a tenant of Crown Land.

S. 35(14) - Lien on all lands in the municipality of person assessed for profits on a mine.

S.105 - Lien on specifically assessed lands.

Corporations Tax Act, S.91 - Lien on all real and personal property in Ontario of the corporation.

Hospital Tax Act, S.18 - Lien on all real and personal property in Ontario of person operating a place of entertainment.

Logging Tax Act, S.31 - Lien on all "property" in Ontario of the taxpayer.

Mining Tax Act, S.26 - Lien on the mine and all land, minerals and machinery connected with it.

Motor Vehicle Fuel Tax Act, S.17 - Lien on all "property" in Ontario of registrant for all tax collectable and payable by him.

Municipal Act, S.380(19) - Lien for sewage service rate on the land using same.

Provincial Land Tax Act, S.21 - Lien on the land assessed.

Retail Sales Tax Act, S.16 - Lien on the "assets of collector's estate in the hands of any trustee".

Workmen's Compensation Act, S.114(3) - Lien on all real and personal property of employer used in or in connection with the industry with respect to which the employer is assessed.

In some of these cases where the existence of the lien is widely recognized, an arrangement has been made that the government department concerned will issue a "release" or statement that no lien is claimed with respect to specified property. This is not a scientific method of title searching. It depends on the assumptions: (a) that the solicitor has made the appropriate enquiry under each potentially applicable Act (the above list of examples shows that it is necessary to ascertain what business has the party ever engaged in regardless of the capacity in which he enters the transaction in question); (b) that the government departments concerned are willing to state their intentions with respect to the property (there is no statutory obligation to do so); and (c) that any release which is obtained will be binding on the Crown (the present practice has no statutory sanction).

It is our submission that in view of these consequential difficulties the Crown should not be given such great advantages over ordinary unsecured creditors of a property owner and that it should be obliged to give notice of its claim by registration. Existing County Registry facilities would be adequate for such registration but in our opinion a central registry for all Crown liens would be preferable.

If this is not found practicable, an alternative recommendation is for appropriate enactments that government departments entitled to liens be required either to claim their lien or issue a binding release within a suitable period upon request by a solicitor who is searching title.

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Our final recommendation is that in any event the statutory provisions creating tax liens should be standardized as to the nature and extent of the lien.

We submit that law reform is necessary if practicing solicitors are to be enabled to achieve the degree of certainty in title matters that is so essential for both private and commercial transactions.

T. B. O. McKeag,

Chairman.